

May 1, 1998

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Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street, SW -- Room 420
Washington, DC 20227.

Dear Ms. Johnson:

This letter addresses Western Corporate Federal Credit Union's (WesCorp) comments in response to the notice of proposed rule making issued by the Treasury Department's Financial Management Service (FMS) regarding the Federal Government's participation in the Automated Clearing House Network.

Our comments are directed specifically to three areas: the five provisions of the NACHA Rules that FMS proposes to preempt completely; the seven provisions of the NACHA Rules that FMS proposes partial preemption; and the proposed automation of reclamations.

Full Preemption

1. ACH Members

Preempts the limitation on the applicability of the ACH rules to members of an ACH association.

Comments: Due to the unique relationship between government entities, the FMS and the Federal Reserve Bank, WesCorp agrees that the applicability of the ACH rules to members of an ACH association should be preempted, allowing the ACH Rules to encompass these federal agencies.

2. Compensation

Preempts the compensation rules set forth in the ACH rules

Comments: WesCorp believes the requirements in the NACHA Rules related to compensation are adequate for resolving claims for all ACH participants, including Federal agencies.

3. Arbitration

Preempts the requirement under the ACH rules that disputes among participants be settled by arbitration procedures set forth in the ACH rules.

Comments: WesCorp believes the requirements in the NACHA Rules related to compensation are adequate for resolving claims for all ACH participants, including Federal agencies.

ACH # 017
WESCORP.

4. Reclamation

Preempts all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

Comments: It appears that this preemption is directly related to FMS' goal to automate the reclamation process and clarify the liabilities and obligations of financial institutions. Please see our comments under "automated reclamation."

5. Timing of Origination

Preempts the requirement set forth in the ACH rules that a credit entry be originated no more than two banking days before the settlement date of the entry

Comments: Originating credit entries more than two banking days before settlement date has been in practice by the Federal Government for quite some time and WesCorp feels it is an acceptable practice to continue.

Partial Preemption

1. Verification of Identity of Recipient

A financial institution that accepts an authorization from a recipient must verify the identity of the recipient. Also, preempts the ODFI warranty and liability provisions of the ACH rules by allocating liability to the RDFI if it accepts a forged authorization.

Comments: If a financial institution accepts and processes an enrollment for a future recipient of Government entries, obtains normal identifying information in the process from the individual, and the enrollment is accepted by a Federal agency for the purpose of originating payments to that individual as a qualified beneficiary, then WesCorp would find it extremely difficult to justify imposing liability on the RDFI for a "forged" enrollment in this regard.

2. Authorization for Debit Entries to Federal Agencies

No person or entity may initiate or transmit a debit entry of a federal agency unless the agency has expressly authorized in writing the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest.

Comments: Under the NACHA Rules for private entries, the authorization sought by FMS is typically handled by agreement. Therefore, we believe it is appropriate for FMS to establish this requirement under the rule.

3. Prenotifications

Requires a financial institution that receives a prenotification relating to government entries to verify the account and at least one other identifying data element in the prenotification. Also requires that a federal agency originate a prenotification before initiating a debit entry to a recipient's account.

Comments: WesCorp strongly objects to the proposed requirement that a financial institution receiving prenotifications relating to Government entries validate anything more than the account number. This requirement would result in substantial costs to financial institutions, as manual exception processing would be almost certainly required to comply. WesCorp feels that the NACHA Rules governing verification of account numbers by originators are adequate for the Federal Government and no exception should be made in this regard. In regards to the proposal to require Federal agencies to originate prenotifications before initiating debit entries, we believe this is appropriate.

4. Liability of the Federal Government

Limits a federal agency's liability to the amount of the entry whether it is originating or receiving ACH entries. Therefore a federal agency would not be liable to a DFI, ACH Operator or an ACH association for interest, attorneys' fees or other consequential damages. In addition, in certain circumstances, a federal agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence. Provides that FRBs are fiscal agents of the Treasury and are not liable to any party other than the Treasury for their actions.

Comments: Limiting a federal agency's liability to the amount of an entry may be acceptable in conjunction with the proposed liability of financial institutions represented in item number 5. However, determining a "financial institution's negligence" amount would need to be further defined.

5. Liability of Financial Institutions

A financial institution would not be liable to the federal government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to a federal agency.

Comments: With the exception of the requirement to pay interest on an unauthorized debit to a Federal agency, this provision is acceptable in conjunction with the proposed liability of the Federal Government represented in item number 5. However, we feel that the compensation provisions in the NACHA Rules represent an equitable means for resolving claims, including claims where a breach of warranty is attributable to either a financial institution or to a Federal agency.

6. Reversals

Requires federal agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. Limits the extent of the indemnification to the amount of the individual entry being reversed.

Comments: Requiring federal agencies initiating reversals to certify that the reversal does not violate applicable law or regulations is acceptable. However, limiting the extent of the indemnification to the amount of the individual entry being reversed appears to shift a portion of the risk of loss to the RDFI as the RDFI's liability may extend beyond the amount of the entry.

7. Account Requirements for Benefit Payments

Credit entries representing benefit payments must be deposited to a "deposit" (not loan or general ledger) account at a financial institution "in the name of" the recipient. A federal agency will be liable to a recipient for any loss sustained by the recipient as a result of the federal agency's failure to originate a credit or debit entry and limits that liability to the amount of the entry.

Comments: WesCorp agrees that benefit payments should be deposited to a deposit account in the name of the recipient and suggests that this is controlled by the agency originating the payment by limiting the transaction codes used for making benefit payments to only those representing deposit accounts. As to the limits of liability of a federal agency, WesCorp feels this has been addressed in item number 4, "Liability of the Federal Government."

Automated Reclamation

FMS believes it would be in the best interest of the Federal Government and financial institutions to develop a more cost-effective and efficient reclamation process by simplifying the formula for allocating liability and eliminating the manual processing requirement upon which the current reclamation process is based.

Comments: FMS' goal toward automation is to be applauded, however, the proposed simplification of the formula for allocating liability seems to place the majority of the liability on the RDFI and has the potential to place a greater financial burden on the RDFI. The proposal suggests a cost saving with automation yet gives no clear suggestions for "automating" the RDFI's right to limit its liability. It's that right to limit liability that consumes the "manual" processing of reclamations. Perhaps a form of EDI can be developed to transmit this type of information via ACH (similar to ENR) to the responsible agencies thereby omitting the need for paperwork yet giving the RDFI the opportunity to limit liability – within designated timeframes.

Thank you for the opportunity to comment on the proposed changes to 31 CFR Part 210. Should you have questions or comments, you are welcome to contact me, at (909) 394-6551.

Sincerely,



Cindy Shipps
Electronic Payment Services